

ORDINANCE NO. 28271

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING
TITLE 14 OF THE SAN JOSE MUNICIPAL CODE, THE
PUBLIC WORKS AND IMPROVEMENTS CODE, TO ADD
A NEW CHAPTER 14.31 TO SET FORTH PROCEDURES
FOR COMMUNITY BENEFIT AND IMPROVEMENT
DISTRICTS**

WHEREAS, the City has the authority, under its charter powers, to adopt mechanisms for financing public improvements and services as long as such mechanisms comply with the California Constitution; and

WHEREAS, the City Council has determined that the state Property and Business improvement District Law is a very useful tool in providing services to the community, but that there is a need to provide flexibility in the formation and operations of such districts;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Title 14 of the San José Municipal Code is hereby amended to add a new chapter, to be numbered, entitled and to read as follows:

CHAPTER 14.31

COMMUNITY BENEFIT AND IMPROVEMENT DISTRICT PROCEDURE

14.31.010 Purpose and Intent

The purpose and intent of this Chapter is to provide an alternate procedure for financing certain public improvements and services which confer special benefits to businesses, residential, commercial, or residential and commercial property through the

establishment of an assessment district, the imposition of assessments and the collection of assessments within such districts.

14.31.020 Authority

The City of San José is a charter city and as such has the authority to add to state law requirements by adopting an ordinance that provides for such additions.

14.31.030 Non-exclusivity

- A. This Chapter is not, in any way, exclusive.
- B. The procedural and substantive requirements provided in this Chapter are in addition to and an alternative to any other procedural and substantive requirements provided in this Code or under state law.
- C. The resolution of intention in any proceedings under any state law or other provision of the Municipal Code may provide that such provisions are supplemented by this Chapter.

14.31.040 Construction

This Chapter is to be liberally construed.

14.31.050 Incorporation of the Property and Business Improvement District Law of 1994

- A. The Property and Business Improvement District Law of 1994 (Chapter 1, commencing with Section 36600, of Part 7 of Division 18 of the Streets and

Highway Code, as amended from time to time), is incorporated in and made a part of this Chapter.

- B. Except as otherwise provided by this Chapter, the procedural and substantive requirements for formation of a Community Benefit and Improvement District and levying of the corresponding assessment shall be as prescribed in the Property and Business Improvement District Law of 1994.

14.31.060 Petition Requirements

- A. Notwithstanding Streets and Highways Code Section 36621(a) or any other provision of state law, the City Council may initiate proceedings to establish a Community Benefit and Improvement District upon receipt of a petition signed by property owners, business owners, or a combination of property owners and business owners in the proposed district who will pay at least thirty percent (30%) of the assessments proposed to be levied.
- B. The amount of the assessment attributable to property and businesses owned by the same owner that is in excess of forty percent (40%) of the amount of all assessments proposed to be levied, shall not be included in determining whether the petition is signed by the business or property owners who will pay the requisite percentage of the assessments.
- C. In the event that a petition is submitted to the City Council that is signed by 100% of the proposed assesses the provisions of subsection B. above does not apply.
- D. Where the Council initiates proceedings pursuant to this subsection, the Council shall conduct a protest ballot proceeding in accordance with Article XIII D of the California Constitution notwithstanding any language to the contrary in Streets and Highways Code Section 26623.

- E. Notwithstanding Streets and Highways Code Section 36632(b) or any other provision of state law, the City Council may establish an assessment district pursuant to this Chapter that encompasses, and levies assessments upon, and funds improvements and services that specially benefit, properties zoned for residential use.

14.31.070 Duration of Assessment

Notwithstanding Streets and Highways Code Section 36622(h) or any other provision of state law, the City Council may form a Community Benefit and Improvement District authorized to levy assessments for a maximum term of up to fifteen (15) years, except where a longer term is authorized by state law.

14.31.080 District Formation Costs

- A. The City Council may authorize an assessment district formed pursuant to this Chapter to recover through assessments the costs incurred in forming the district, including:
1. The costs of investigating the feasibility of forming an assessment district;
 2. The costs of preparation of the management plan and engineer's report required by state law;
 3. The cost of circulating and submitting the petition to the City Council seeking establishment of the district;
 4. The costs of printing, advertising and the giving of published, posted or mailed notices;

5. Compensation of any engineer or attorney or other consultant employed to render services in proceedings under this Article or Streets and Highways Code Sections 36600 et seq.; and
 6. Costs associated with any ballot proceedings required by law for approval of a new or increased assessment.
- B. If the district will be authorized to recover these costs, the management plan required pursuant to Streets and Highways Code Section 36622 shall specify the formation costs eligible for recovery through assessments, the schedule for recovery of those costs, and the basis for determining the amount of the additional assessment for recovery of costs, including the maximum amount of the additional assessment, expressed either as a dollar amount, or as a percentage of the underlying assessment.
- C. Proponents of a district proposed to be formed pursuant to this Chapter shall provide a financial deposit for costs incurred by the City with the submittal of a petition to the City Council as set forth in Section 14.31.060.

14.31.090 Compliance with Chapter

Any assessments levied pursuant to this Chapter shall not be held invalid for failure to comply with the provisions of this Chapter provided such failure is not a constitutional defect.

14.31.100 Conflict of Law

In the event of any conflict between the provisions of this Chapter or other provisions of the Municipal Code and the provisions of the Property and Business Improvement District Law, this Chapter shall govern.

PASSED FOR PUBLICATION of title this 11th day of March, 2008, by the following vote:

AYES: CHIRCO, CHU, CONSTANT, CORTESE, LICCARDO,
NGUYEN, OLIVERIO, PYLE, WILLIAMS, REED

NOES: CAMPOS

ABSENT: NONE

DISQUALIFIED: NONE

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk